



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152301

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment has been correctly determined.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to question that calculation of her FoodShare allotment for October 2013. The agency determined the allotment to be \$16.00 – this was the categorically eligible minimum allotment at that time.

3. The agency determined Petitioner's gross income to be \$2135 based on self-employment earnings of \$1420.00, earned income of \$515.10 and \$200 paid by Petitioner's child's grandmother as a child support.
4. In determining Petitioner's FoodShare allotment the agency credited Petitioner with the following deductions: a standard deduction of \$152, a 20% earned income deduction, a shelter deduction of \$1.96 based upon rent of \$350.00 and the utility allowance of \$450.00.
5. Petitioner's household size is 2.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The \$200.00 Petitioner receives from the grandmother of her child is countable whether child support or even a gift. *FSH, §4.3.4.2 at #s 11 & 20.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.* For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. *7 CFR §273.10(c)(2).*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$152 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility allowance is a standard and is \$450.00 per month and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

Petitioner did not dispute the income or expenses used here. In reviewing the calculation, it seems that the agency used the wrong rent for October 2013 as Petitioner contacted the agency in September to report that she was paying the full \$700. Changes reported in one month are effective in the next. *FSH, §6.1.3.3.* Nonetheless, it would not change the allotment.

Petitioner noted, however, that her income has changed and that she had faxed new information to the agency about those changes in the month and week before the hearing. Her FoodShare case has, however, been closed since December 1, 2013. That closure was not appealed but Petitioner should note that she has 90 days from the date of an action on a case to file an appeal, thus she may still appeal the December 1, 2013 case closure if she does so within 90 days of December 1, 2013. Finally, Petitioner was also advised at the hearing to reapply for FoodShare.

CONCLUSIONS OF LAW

That the available evidence is sufficient to demonstrate that it correctly determined Petitioner's FoodShare allotment for October 2013.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

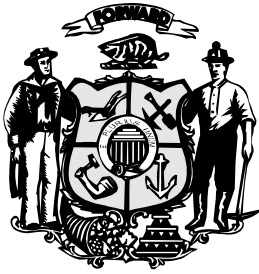
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of February, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 25, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability